



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

VISTA MEDICAL CENTER HOSPITAL
4301 VISTA ROAD
PASADENA TEXAS 77504

Respondent Name

AMERICAN GUARANTEE & LIABILITY

Carrier's Austin Representative Box

Box Number 19

MFDR Date Received

AUGUST 30, 2006

MFDR Tracking Number

M4-07-0091-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated September 19, 2006: "The Carrier has not made a legal denial of reimbursement under the applicable rules and statutes." "Carrier may reimburse at a 'per diem' rate for the hospital services if the total audited charges for the entire admission are below \$40,000, after the Carrier audits the bill pursuant to the applicable rules." "In this instance, the audited charges that remained in dispute after the last bill review by the insurance Carrier **\$140,650.48**...The prior amounts paid by the Carrier were **\$10,219.50**. Therefore, the Carrier is required to reimburse the remainder of the Workers' Compensation reimbursement amount of **\$95,268.36**, plus any and all interest applicable."

Requestor's Supplemental Position Summary Dated October 31, 2011: "Please allow this letter to serve as a supplemental statement to Vista's originally submitted request for dispute resolution in consideration of the Texas Third Court of Appeals' Final Judgment...The medical records on file with MDR show this admission to be a complex spine surgery which is unusually extensive for at least three reasons...The medical and billing records on file with MDR also show that this admission was unusually costly for two reasons..."

Amount in Dispute: \$95,268.36

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated September 21, 2006: "The Requestor asserts it is entitled to reimbursement in the amount of \$105,487.86, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement..."

Respondent's Supplemental Position Summary Dated September 8, 2011: "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)..."

Responses Submitted by: Flahive, Ogden & Latson, 505 West 12th Street, Austin, Texas 78701

SUMMARY OF FINDINGS

| Disputed Dates | Disputed Services | Amount In Dispute | Amount Due |
|---|-----------------------------|-------------------|------------|
| December 5, 2005 through December 8, 2005 | Inpatient Hospital Services | \$95,268.36 | \$7352.00 |

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.304, 25 *Texas Register* 2115, applicable to dates of service on or after July 15, 2000, sets out the procedures for medical payments and denials.
2. Former 28 Texas Administrative Code §133.305, 27 *Texas Register* 12282, amended effective January 1, 2003, sets out general provisions for medical dispute resolution.
3. Former 28 Texas Administrative Code §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
4. Former 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
5. Texas Labor Code §408.027, titled *Payment of Health Care Provider*, effective September 1, 2005, sets out the deadline for timely submitting the medical bills to the insurance carrier.
6. 28 Texas Administrative Code § 102.4, titled *General Rules for Non-Commission Communication*, effective May 1, 2005, sets out rules to determine when written documentation was sent.
7. 28 Texas Administrative Code §134.1, effective May 16, 2002, 27 *Texas Register* 4047, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."
8. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.
9. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated March 16, 2006

- 42-Charges exceed our fee schedule or maximum allowable amount.
- 97-Payment is included in the allowance for another service/procedure.
- 226-Included in global charge.
- 790-This charge was reduced in accordance to the Texas medical fee guideline.

Explanation of benefits dated April 28, 2006

- 29-The time limit for filing has expired.
- 42-Charges exceed our fee schedule or maximum allowable amount.
- 97-Payment is included in the allowance for another service/procedure.
- 200-Per 134.801a medical bill shall [sic] not be submitted later than the 1st day of the 11th month (<08/31/05) or 95 days (> 09/01/05) after DOS.
- 226-Included in global charge.
- 790-This charge was reduced in accordance to the Texas medical fee guideline.

Issues

1. Did the respondent provide sufficient explanation for denial of the disputed services?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?

4. Did the admission in dispute involve unusually costly services?
5. Did the requestor submit documentation to support the disputed bills were submitted timely in accordance with Texas Labor Code §408.027(a)?
6. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” On August 10, 2011, both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The Division received supplemental information from the respondent on September 8, 2011 and then received supplemental information from the requestor on October 31, 2011. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the Division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services in this case are unusually extensive; and whether the admission and disputed services in this case are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet those three factors.

1. 28 Texas Administrative Code §133.304(c), 25 Texas Register 2128, effective July 15, 2000, states, in pertinent part, that “At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s). A generic statement that simply states a conclusion such as ‘not sufficiently documented’ or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section.” The requestor asserts in its position statement that: “The Carrier has not made a legal denial of reimbursement under the applicable rules and statutes.”

Review of the submitted documentation finds that the explanation of benefits dated March 16, 2006 and April 28, 2006 were issued using the division-approved form TWCC 62 and noted payment exception codes of “42-Charges exceed our fee schedule or maximum allowable amount”; “97-Payment is included in the allowance for another service/procedure”; “226-Included in global charge”; “790-This charge was reduced in accordance to the Texas medical fee guideline”; “29-The time limit for filing has expired”; and “200-Per 134.801a medical bill shall [sic] not be submitted later than the 1st day of the 11th month (<08/31/05) or 95 days (> 09/01/05) after DOS” for the services in dispute.

These payment exception codes support an explanation for the reduction of reimbursement based on the Per Diem provision in former 28 Texas Administrative Code §134.401. These reasons support a reduction of the reimbursement amount from the requested stop-loss exception payment reimbursement methodology to the standard per diem methodology amount and provided sufficient explanation to allow the provider to understand the reason(s) for the insurance carrier's action(s). The Division therefore concludes that the insurance carrier has met the requirements of §133.304(c).

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier on March 16, 2006 and April 28, 2006 finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$140,650.48. The Division concludes that the total audited charges exceed \$40,000.

3. The requestor in its original position statement asserts that "Carrier may reimburse at a 'per diem' rate for the hospital services if the total audited charges for the entire admission are below \$40,000, after the Carrier audits the bill pursuant to the applicable rules." As noted above, the Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) rendered judgment to the contrary. In its supplemental position statement dated October 31, 2011 the requestor considered the Courts' final judgment and opined on both rule requirements. In regards to whether the services were unusually extensive, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. Rule §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The requestor's supplemental position statement asserts that:

"The medical records on file with MDR show this admission to be a complex spine surgery which is unusually extensive for at least two reasons; first, this type of surgery is unusually extensive when compared to all surgeries performed on workers' compensation patients in that only 19% of such surgeries involved operations on the spine; second, this type of surgery requires additional, trained nursing staff and specialized equipment (such as the operating table) thereby making the hospital services unusually extensive. Finally, any evidence of comorbidities, which should be considered, is part of the medical records, which have been previously filed."

The requestor's categorization of spinal surgeries presupposes that all spinal surgeries are unusually extensive for the specified reasons. The requestor did not submit documentation to support the reasons asserted, nor did the requestor point to any sources for the information presented. The reasons stated are therefore not demonstrated. Additionally, the requestor's position that all spinal surgeries are unusually extensive does not satisfy §134.401(c)(2)(C) which requires application of the stop-loss exception on a case-by-case basis. The Third Court of Appeals' November 13, 2008 opinion affirmed this, stating "The rule further states that independent reimbursement under the Stop-Loss Exception will be 'allowed on a case-by-case basis.' *Id.* §134.401(c)(2)(C). This language suggests that the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor's position that all spine surgeries are unusually extensive fails to meet the requirements of §134.401(c)(2)(C) because the particulars of the services in dispute are not discussed, nor does the requestor demonstrate how the services in dispute were unusually extensive in relation to similar spinal surgery services or admissions. For the reasons stated, the Division finds that the requestor failed to demonstrate that the services in dispute were unusually extensive.

4. In regards to whether the services were unusually costly, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor's supplemental position statement asserts that:

"The medical and billing records on file with MDR also show that this admission was unusually costly for two reasons: first the median charge for all workers' compensation inpatient surgeries is \$23,187; the median charge for workers' compensation surgeries of this type is \$39,000; therefore the audited billed charges for this surgery substantially exceed not only the median charges, but also the \$40,000 stop-loss threshold; second, as mentioned in the preceding paragraph, in order for this surgery to be performed, specialized equipment and specially trained, extra nursing staff were

required, thereby adding substantially to the cost of surgery in comparison to other types of surgeries.”

The requestor asserts that because the **billed charges** exceed the stop-loss threshold, the admission in this case is unusually costly. The Division notes that audited charges are addressed as a separate and distinct factor described in 28 Texas Administrative Code §134.401(c)(6)(A)(i). Billed charges for services do not represent the cost of providing those services, and no such relation has been established in the instant case. The requestor fails to demonstrate that the **costs** associated with the services in dispute are unusual when compared to similar spinal surgery services or admissions. For that reason, the division rejects the requestor’s position that the admission is unusually costly based on the mere fact that the billed or audited charges “substantially” exceed \$40,000. The requestor additionally asserts that certain resources that are used for the types of surgeries associated with the admission in dispute (i.e. specialized equipment and specially-trained, extra nursing staff) added substantially to the cost of the admission. The requestor does not list or quantify the costs associated with these resources in relation to the disputed services, nor does the requestor provide documentation to support a reasonable comparison between the resources required for both types of surgeries, and therefore fails to demonstrate that the resources used in this particular admission are unusually costly when compared to resources used in “other types of surgeries.” As noted above, the Third Court of Appeals’ November 13, 2008 opinion stated that “...the Stop-Loss Exception was meant to apply on a case-by-case basis in a relatively few cases.” The Division concludes that the requestor failed to demonstrate that the specific services in this dispute were unusually costly when compared to similar spinal surgery services or admissions.

5. According to the explanation of benefits the respondent raised the issue of timely filing medical bills based upon reason codes “29-The time limit for filing has expired”; and “200-Per 134.801a medical bill shall [sic] not be submitted later than the 1st day of the 11th month (<08/31/05) or 95 days (> 09/01/05) after DOS”.

Texas Labor Code §408.027(a) states “A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider’s right to reimbursement for that claim for payment.”

28 Texas Administrative Code §102.4(h) states “Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:

- (1) the date received, if sent by fax, personal delivery or electronic transmission or,
- (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.”

The March 16, 2006 explanation of benefits indicates that the insurance carrier received the medical bill on March 4, 2006. The Division finds that the requestor did not submit any documentation to support when the original bill was sent. Therefore, per 28 Texas Administrative Code §102.4(h)(2) the date received of March 4, 2006 minus five days equals 94 days for date of service December 5, 2005. The Division concludes that the submitted medical bills were submitted timely in accordance with Texas Labor Code §408.027(a).

6. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” A review of the hospital bill indicates that the requestor billed for four inpatient days. Based upon an admission of December 5, 2005 and discharge of December 8, 2005 the length of stay is three days. The surgical per diem rate of \$1,118 multiplied by the length of stay of three days results in

an allowable amount of \$3,354.00.

- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$59,252.00. The respondent paid \$5,747.50.
- The Division finds the total allowable for the implants billed under revenue code 278 is:

| Description of Implant per Itemized Statement | Quantity | Cost Invoice | Cost + 10% |
|---|----------|---------------------------------|----------------------------------|
| Spacer ALIF | 1 | \$3735.00 | \$3735.00 + \$373.50 = \$4108.50 |
| Screw Locking | 4 | No support for cost/ invoice | \$0.00 |
| Plate ATB (NOTE: There's a typographical error on the itemized statement this implant was billed with revenue code 270 instead of 278) | 1 | No support for cost/ invoice | \$0.00 |
| Bone Graft Infuse | 1 | \$4990.00 | \$4990.00 + \$499.00 = \$5489.00 |
| Screw Synthes | 1 | No support for cost/ invoice | \$0.00 |
| EBI Bone Growth Stimulator | 1 | \$4200.00 | \$4200.00 + 420.00 = \$4620.00 |
| TOTAL DUE | | | \$14,217.50 |

- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$425.00/unit for Morphine PCA. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The Division concludes that the total allowable for this admission is \$17,571.50 (\$3,354.00 + 14,217.50). The respondent issued payment in the amount of \$10,219.50 for the surgical days. Based upon the documentation submitted, additional reimbursement of \$7,352.00 (\$17,571.50 - \$10,219.50) is recommended.

Conclusion

The submitted documentation supports additional reimbursement sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually costly services, and failed to demonstrate that the services in dispute were unusually extensive. The requestor further established that additional payment is due. As a result, the amount ordered is \$7,352.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$7,352.00 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

| | | |
|--------------------|---|----------------------------|
| _____ Signature | _____ Medical Fee Dispute Resolution Officer | 6/27/2012 _____ Date |
|--------------------|---|----------------------------|

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.